



TEXAS RACING COMMISSION

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Texas Racing Commission
Committee on Rules
Tuesday, April 6, 2010
9:30 a.m.
Texas Department of Public Safety
6100 Guadalupe, Criminal Law Enforcement
Building E, First Floor Auditorium
Austin, Texas 78752

AGENDA

Discussion and public input relating to the following:

- A. Rule Review Update
 - 1. Review of Chapter 307, Proceedings before the Commission (A-1)
 - 2. Review of Chapter 321, Pari-mutuel Wagering (A-10)
 - 3. Review of Chapter 323, Disciplinary Action and Enforcement (A-13)
- B. Rule Proposals
 - 1. Texas Quarter Horse Association Proposed Change to § 303.93 (f)(3)(D), Quarter Horse Rules (B-1)
- C. Solicitation of Input on Topics to be Addressed at the Racing Commissioners International (RCI) Model Rules and Practices Committee Meeting on April 13, 2010
 - 1. Thoroughbred Model Rule – Appropriate Urging of the Thoroughbred Race Horse
 - 2. Riding Crop – Prohibition Against Raising Hand Above the Shoulder (C-1)
 - 3. Hyperbaric Oxygen Chamber (Discussion only) (C-2)
 - 4. Out of Competition Testing (Discussion only) (C-3)
- D. Overview of RCI Proposed Model Legislation to Create an Interstate Regulatory Compact for Pari-mutuel Racing (D-1)

ITEM A.

RULE REVIEW UPDATE:

- 1) Review of Chapter 307, Proceedings before the Commission (A-1)*
- 2) Review of Chapter 321, Pari-mutuel Wagering (A-10)*
- 3) Review of Chapter 323, Disciplinary Action and Enforcement (A-13)*

CHAPTER 307. PROCEEDINGS BEFORE THE COMMISSION

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CHAPTER 307. PROCEEDINGS BEFORE THE COMMISSION

Subchapter A. General Provisions

Sec. 307.1. Applicability.

This chapter provides the general procedures for instituting, conducting, and determining all matters within the Commission's jurisdiction. This chapter is not intended to enlarge, diminish, or alter the jurisdiction, powers, or authority of the Commission or the substantive rights of a person. The procedures in this chapter supplement any applicable procedures required by statute or another Rule. (Added eff. 1/1/02)

Sec. 307.2. Definitions.

The definitions in Government Code, Chapter 2001, apply to the Rules. (Added eff. 1/1/02)

Sec. 307.3. Types of Proceedings.

(a) A contested case proceeding is one in which the Commission is authorized or required by law to make a decision regarding the rights or privileges of a person after notice and hearing. Pursuant to Government Code, §2003.021, the executive secretary will refer all contested cases to the State Office of Administrative Hearings (SOAH) for a hearing. Examples of contested case proceedings are an administrative penalty issued by the executive secretary and an appeal from a stewards' or judges' ruling.

(b) A decision-making proceeding is one in which the Commission is authorized or required by law to make a decision regarding the rights or privileges of a person in open meeting, but without an evidentiary hearing. An example of a decision-making proceeding is the allocation of live race dates pursuant to the Act, §§8.01 and 10.01.

(c) A proceeding before the stewards or racing judges is one conducted pursuant to the Act, §3.07 or to authority granted by the Commission in the Rules.

(d) A rulemaking proceeding is one in which

the Commission proposes or adopts a rule governing any matter within the Commission's jurisdiction. (Added eff. 1/1/02)

Sec. 307.4. Decision-Making Proceedings.

(a) Procedures. For each decision-making proceeding, the executive secretary may establish appropriate deadlines and procedures that are consistent with any applicable Rule relating to the specific proceeding. The procedures must ensure:

(1) reasonable notice to each affected licensee and industry organization;

(2) a reasonable opportunity for each affected licensee and industry organization to review relevant information presented to the Commission on the matter; and

(3) a reasonable opportunity for each affected licensee and industry organization to present information to the Commission on the matter.

(b) Staff Recommendations. The executive secretary may present a staff recommendation in a decision-making proceeding if the executive secretary determines a recommendation will assist the Commission in evaluating the information presented, drawing a conclusion, or making a decision. The executive secretary shall present a staff recommendation if requested by the Commission.

(c) Commission Action. Commission action in a decision-making proceeding must be made in open meeting in accordance with the open meetings law, Government Code, Ch. 551.

(d) Documentation of Decision. Each decision made by the Commission in a decision-making proceeding is documented by the transcript of each open meeting at which the issues involved in the proceeding are discussed or the decision is made. No written order of the Commission is required in a decision-making proceeding. The Commission or the executive secretary may issue a written statement clarifying a Commission decision in a decision-making proceeding if the Commission or the executive secretary determines the statement

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will facilitate understanding of and compliance with the decision. (Added eff. 1/1/02)

Sec. 307.5. Special Provisions Regarding Racetrack License Applications.

(a) To the extent that Chapter 309 of this title (relating to Racetrack Licenses and Operations) conflicts with this chapter regarding application procedures for a license to operate a pari-mutuel racetrack, Chapter 309 controls.

(b) For each application, the executive secretary shall determine whether to refer the application to SOAH for a hearing. In making the determination, the executive secretary shall consider the expressed support and opposition to the application. For each application the executive secretary proposes should be denied, the executive secretary shall refer the application to SOAH for a hearing. (Added eff. 1/1/02)

Sec. 307.6. Probation.

(a) If the Commission, stewards, or racing judges suspend a license issued under the Act, the Commission, stewards, or racing judges may probate all or any portion of the suspension.

(b) The order or ruling entered placing a licensee on probation must state the specific probationary period and the terms and conditions of the probation.

(c) The terms and conditions of probation must have a reasonable relationship to the violation and may include:

(1) attending a prescribed number of hours in a specific area of study during the probationary period;

(2) passing a prescribed examination in a specific area of study;

(3) periodic reporting to the Commission, stewards, racing judges, or other designated person on any matter that is the basis of the probation;

(4) a medical evaluation and completion of a prescribed treatment program;

(5) cooperation with the Commission investigators and the Department of Public Safety

in a specific investigation; and

(6) other terms and conditions specified in the order or ruling that are reasonable and appropriate.

(d) If the Commission, stewards, or racing judges determine the licensee has failed to comply with the terms and conditions of the probation, the probation may be revoked on three days notice to the licensee. (Added eff. 1/1/02)

Sec. 307.7. Ejection and Exclusion.

(a) The Commission, executive secretary, stewards, or racing judges, may order an individual ejected or excluded from an association's grounds in accordance with the Act if the Commission, executive secretary, stewards, or racing judges, determine that:

(1) the individual may be excluded or ejected under the Act, §3.16 or §13.01; and

(2) the individual's presence on association grounds is inconsistent with maintaining the honesty and integrity of racing.

(b) Not later than 20 days after notification of the exclusion or ejection is sent or served, a person ejected or excluded under this section may request a hearing pursuant to the Act, §13.02 and this chapter.

(c) If a person is excluded under this section, a race animal owned or trained by or under the care or supervision of the person is ineligible to be entered or to start in a race in Texas. (Added eff. 1/1/02; (b) amended eff. 6/1/02)

Subchapter B. Contested Cases

Sec. 307.31. Prehearing Procedures.

(a) Docketing. When a pleading to institute a contested case proceeding before the Commission is received, and it complies with the Rules as to form and content, the executive secretary shall docket the proceeding as pending, numbered in accordance with the docket numbering system of the Commission.

(b) Settlement. The executive secretary may attempt to settle any contested case proceeding

through agreement. If the proceeding involves a racetrack, the executive secretary shall present an agreed order to the Commission. If the proceeding involves an occupational licensee, the executive secretary may issue a ruling reflecting the terms of the agreement and if applicable, superceding the stewards' or judges' ruling.

(c) Referral to SOAH. If after a reasonable time the proceeding cannot be settled through agreement, the executive secretary shall refer the matter to SOAH. (Added eff. 1/1/02)

Sec. 307.32. Nonparty Participation.

(a) A person who instead of intervening desires merely to express support or opposition in a contested case proceeding pending before the Commission may file with SOAH a request for nonparty participant status which includes a written statement regarding the person's position on the matter. The request must be filed not later than the date set by the administrative law judge (ALJ). At the time of filing, the person shall serve a copy of the statement on each party of record and file proof of service with SOAH.

(b) The ALJ may authorize a late filing under this section on a motion showing extenuating circumstances.

(c) A nonparty participant's statement may be stricken from the record if the ALJ determines that it does not substantially comply with this section. (Added eff. 1/1/02)

Sec. 307.33. Hearing.

A hearing conducted by SOAH on a contested case proceeding pending before the Commission is governed by SOAH's rules of procedure. (Added eff. 1/1/02)

Sec. 307.34. Exceptions and Replies.

Not later than 10 days after the date SOAH mails a proposal for decision to a party, the party may file exceptions to the proposal. A reply to an exception filed under this section must be filed not later than seven days after the last day for

filing the exceptions. Exceptions and replies to exceptions must be filed at the Commission's main office in Austin. A copy of each exception and reply must be served on each party or the party's representative. (Added eff. 1/1/02)

Sec. 307.35. Oral Argument.

(a) A party may request oral argument before the Commission before the Commission takes action on a proposal for decision or motion for rehearing.

(b) Oral argument is allowed only at the discretion of the Commission. (Added eff. 1/1/02)

Sec. 307.36. Consideration by Commission.

(a) After the deadline for filing exceptions and replies, the proposal for decision will be considered by the Commission at open meeting.

(b) The Commission may:

(1) adopt the proposal for decision, in whole or in part;

(2) decline to adopt the proposal for decision, in whole or in part; or

(3) remand the proceeding to SOAH and direct the ALJ to give further consideration to the proceeding with or without reopening the hearing.

(c) When notifying SOAH that the Commission has remanded a proceeding, the executive secretary shall forward a copy of the transcript from the Commission meeting containing the Commission's comments on the proceeding. (Added eff. 1/1/02)

Sec. 307.37. Final Order.

(a) After consideration of a proposal for decision, the executive secretary shall prepare a written final order documenting the Commission's decision on the proposal for decision. A final order must include findings of facts and conclusions of law, separately stated.

(b) A final order of the Commission must be signed by a majority of the members of the Commission who voted in favor of issuing the

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order.

(c) The executive secretary shall serve a copy of the final order on each party or the party's representative and each non-party participant.

(d) A final order of the Commission takes effect on the date the order is issued, unless otherwise stated in the order. (Added eff. 1/1/02)

Sec. 307.38. Rehearing.

(a) Government Code, §2001.146, pertaining to rehearing after Commission action, is hereby incorporated by reference.

(b) An order granting a motion for rehearing vacates the preceding final order. The order granting a motion for rehearing may direct that the hearing be reopened or may incorporate a new final decision. If the Commission renders a new decision, a motion for rehearing directed to the new decision is a prerequisite to appeal. (Added eff. 1/1/02)

Sec. 307.39. Judicial Review.

In accordance with Government Code, §2001.171, a person who is aggrieved by an order of the Commission in a contested case proceeding and who has exhausted all administrative remedies is entitled to judicial review. (Added eff. 1/1/02)

Subchapter C. Proceedings by Stewards and Racing Judges

Sec. 307.61. General Authority.

(a) In addition to the authority granted the stewards and racing judges in Chapter 313 (relating to Officials and Rules of Horse Racing) and Chapter 315 (relating to Officials and Rules of Greyhound Racing) of this title, the stewards and racing judges may:

(1) conduct an inquiry regarding an alleged violation of the Act or a Rule or regarding a complaint, objection, or protest made by a licensee;

(2) charge a licensee with a violation of a Rule;

(3) conduct disciplinary hearings; and

(4) impose fines and suspend occupational licenses as provided by this subchapter.

(b) Regardless of whether the stewards or racing judges act on a violation of the Act or a Rule, the stewards and racing judges may refer the matter to the Commission for consideration and action.

(c) The laws of this state and the Rules supersede the conditions of a race and the rules of an association. In matters pertaining to racing, the rulings and decisions of the stewards and racing judges supersede the rulings and orders of the association officers. (Added eff. 1/1/02)

Sec. 307.62. Disciplinary Hearings.

(a) Authority to Conduct. On their own motion or on receipt of a complaint regarding the actions of an occupational licensee, the stewards and racing judges may conduct a disciplinary hearing regarding the licensee's actions.

(b) Notice of Hearing. Except as otherwise provided by the Rules, the stewards and racing judges shall provide written notice to a person who is the subject of a disciplinary hearing at least 10 calendar days before the hearing. Notice given under this subsection must state the nature of the charges against the person and the possible penalties that may be imposed. The person may waive his or her right to 10 days notice.

(c) Rights of the Licensee. At a disciplinary hearing conducted by the stewards or racing judges, the person who is the subject of the disciplinary hearing has the following rights, all of which the person may waive:

(1) the right to counsel;

(2) the right to present a defense;

(3) the right to make an opening and closing statement;

(4) the right to call witnesses; and

(5) the right to cross-examine witnesses testifying against the person.

(d) Evidence.

(1) Each witness at a disciplinary hearing conducted by the stewards or racing judges must

be sworn by the presiding steward or racing judge.

(2) To facilitate participation by licensees, the stewards and racing judges may permit witnesses to testify at a disciplinary hearing via telephone if the stewards or racing judges make reasonable assurances that the person testifying is who he or she purports to be.

(3) The stewards and racing judges shall make a record of a disciplinary hearing.

(e) Agreed Settlement. The person who is the subject of the disciplinary hearing may waive the right to a hearing and subsequent appeal and enter into an agreed settlement with the stewards or racing judges.

(f) Failure to Appear. The stewards or racing judges may suspend the license of a person who fails to appear at a disciplinary hearing after receiving written notice of the hearing until the matter is adjudicated.

(g) Summary Suspension. If the stewards or racing judges determine that a licensee's actions constitute an immediate danger to the public health, safety, or welfare, the stewards or racing judges may enter a ruling summarily suspending the license, without a prior hearing. A summary suspension takes effect immediately on issuance of the ruling. If the stewards or racing judges suspend a license under this subsection, the licensee is entitled to a hearing on the suspension not later than three calendar days after the day the license is suspended. The licensee may waive his or her right to a hearing on the summary suspension within the three-day period. (Added eff. 1/1/02)

Sec. 307.63. Ruling.

(a) The issues at a disciplinary hearing shall be decided by a majority vote of the stewards or racing judges. If the vote is not unanimous, the dissenting steward or judge shall include with the record of the hearing a written statement of the reasons for the dissent and sign the statement.

(b) A ruling by the stewards or racing judges

must be on a form prescribed by the executive secretary and include:

(1) the full name, license type, and license number of the person who is the subject of the hearing;

(2) a statement of the allegations against the person, including a reference to the specific section of the Act or Rule;

(3) the date the ruling was issued;

(4) the penalty imposed;

(5) any changes in the order of finish or prize distribution; and

(6) other information required by the executive secretary.

(c) A ruling must be signed by a majority of the stewards or racing judges.

(d) At the time the stewards or racing judges inform a person who is the subject of a disciplinary hearing of the ruling issued for the proceeding, the stewards or racing judges shall inform the person of the person's right to appeal the ruling to the Commission. (Added eff. 1/1/02)

Sec. 307.64. Penalties.

(a) For each violation of the Act or a Rule, the stewards and racing judges may:

(1) impose a fine of not more than \$5,000; and

(2) suspend an occupational license for not more than one year.

(b) A person against whom the stewards or racing judges have imposed a fine shall pay the fine to the Commission not later than 5:00 p.m. of the third calendar day after the day the person is informed of the ruling that imposed the fine. (Added eff. 1/1/02)

Sec. 307.65. Reciprocity.

The stewards and racing judges shall honor the rulings issued by other pari-mutuel racing commissions. (Added eff. 1/1/02, amended eff. 7/1/03)

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Sec. 307.66. Applicability of Rules and Rulings.

(a) Rules pertaining to a licensee and rulings against a licensee apply to another person if continued participation in an activity by the other person would circumvent the intent of a Rule or ruling by permitting the person to serve, in essence, as a substitute for the ineligible licensee because:

(1) the other person is legally liable for the conduct that violated the Rule or is the subject of the ruling; or

(2) the other person benefited financially from that conduct.

(b) The fraudulent transfer of a race animal to avoid application of a Rule or ruling is prohibited.

(Added eff. 1/1/02)

Sec. 307.67. Appeal to the Commission.

(a) Right to Appeal. A person aggrieved by a ruling of the stewards or racing judges may appeal to the Commission. A person who fails to file an appeal by the deadline and in the form required by this section waives the right to appeal the ruling.

(b) Filing Procedure.

(1) An appeal must be in writing in a form prescribed by the executive secretary. The appeal must be filed not later than 5:00 p.m. of the third calendar day after the day the person is informed of the ruling by the stewards or racing judges. The appeal must be filed at the main Commission offices in Austin or with the stewards or racing judges at a Texas pari-mutuel racetrack where a live race meet is being conducted. The appeal must be accompanied by a cash bond in the amount of \$150, to defray the costs of the court reporter and transcripts required for the appeal. The bond must be in the form of a cashier's check or money order.

(2) Record of Stewards'/Judges' hearing. On notification by the executive secretary that an appeal has been filed, the stewards or racing judges shall forward to the Commission the record of the proceeding being appealed. A

person appealing a stewards' or judges' ruling may request a copy of the record of the hearing and the executive secretary may assess the cost of making to the copy to the requestor.

(c) Hearing Procedure. A hearing on an appeal from a ruling by the stewards or racing judges is a contested case and shall be conducted by SOAH in accordance with the Rules regarding contested cases. In an appeal, the appellant has the burden to prove that the stewards' or racing judges' decision was clearly in error.

(d) Effect of Appeal on Fine Payment. If a person against whom a fine has been assessed appeals the ruling that assesses the fine, the person shall pay the fine in accordance with the Rules. If the appeal is disposed of in favor of the appellant, the Commission shall refund the amount of the fine.

(e) Effect of Appeal on Purse Payment. If a ruling that affects the outcome of a race is appealed, the portion of the purse that is involved in the appeal shall be withheld and not distributed. The stewards or racing judges may distribute the portion of the purse that is not involved in or affected by the outcome of the appeal.

(f) Effect of Appeal on Horse Eligibility. If an appeal involves the official order of finish in a horse race, all horses finishing first or declared to be the winner by the stewards carry all penalties of eligibility until the winner is determined through the final resolution of the appeal. (Added eff. 1/1/02)

Sec. 307.68. Stay.

(a) Contemporaneously with filing an appeal from a stewards' or judges' ruling, a licensee whose license is suspended by the ruling may request a stay of the suspension. The executive secretary may grant a stay of the suspension if the executive secretary determines granting the stay is in the interest of justice. The executive secretary may set the term of the stay and may extend a stay if circumstances warrant.

(b) The fact that a stay is granted is not a

presumption that the ruling by the stewards or racing judges is invalid.

(c) The executive secretary may rescind a stay granted under this section if the executive secretary determines the reasons supporting the original issuance of the stay are no longer valid.

(Added eff. 1/1/02)

Sec. 307.69. Action by Commission.

On its own motion or on request by the executive secretary, the Commission may reverse a decision of the stewards or racing judges, modify a penalty imposed by the stewards or racing judges, or reinstate a person's license and rescind the penalty. (Added eff. 1/1/02)

Subchapter D. Rulemaking

Sec. 307.101. Purpose.

As authorized by the Act, §3.02 and other law, the Commission shall adopt rules as authorized and required by law which are necessary for the performance of its duties, to establish standards of conduct for its licensees, to ensure strict compliance with and enforcement of the Act, to ensure uniform practice and procedure, and to provide for public participation, notice of agency actions, and a fair and expeditious determination of matters. (Added eff. 1/1/02)

Sec. 307.102. Rulemaking Procedure.

(a) The executive secretary or a Commissioner may present to the Commission a suggested new rule, amendment to an existing rule, or repeal of a rule.

(b) The executive secretary shall provide a copy of each suggested new rule, amendment to an existing rule, or repeal of a rule to each Commissioner before the Commission meeting at which the rule will be considered.

(c) If the Commission votes to propose a suggested new rule, amendment to an existing rule, or repeal of a rule, the executive secretary shall file the proposal with the Secretary of

State for publication in the Texas Register in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

(d) Contemporaneously with filing with the Texas Register, the executive secretary shall distribute a copy of each proposal to each association. On receipt of a proposal, an association shall promptly post the proposal in a prominent place that will ensure access by interested persons.

(e) The documentation filed with the Secretary of State for publication in the Texas Register and the transcript of the Commission meeting at which a rule is finally adopted constitutes the Commission's order adopting the rule. (Added eff. 1/1/02)

Sec. 307.103. Petition for Adoption of Rules.

(a) A person may request the Commission to adopt, amend, or repeal a rule by filing the request in writing with the executive secretary.

(b) The request must include:

(1) the full name, address, and telephone number of the person making the request;

(2) the text of the new section or amendment, or a reference to the section proposed for repeal, identified in a manner sufficient to show the context of the new section, amendment, or repeal;

(3) a suggested effective date;

(4) reasons for the proposed action in narrative form in sufficient detail to inform the Commission fully of the facts on which the person relies;

(5) the desired effect of the proposed section, amendment, or repeal;

(6) the fiscal implications of the proposed section, amendment, or repeal to the state, to units of local government, to small businesses, and to individuals, if any; and

(7) the signature of the person or a representative of the person.

(c) The executive secretary shall inform the

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Chair of the Commission of each petition for rulemaking filed. The Chair shall determine whether to place the petition on the agenda for a Commission meeting for consideration by the Commission.

(d) Not later than the 60th day after the date a petition under this section is submitted, a state agency shall:

(1) deny the petition in writing, stating its reasons for the denial; or

(2) initiate a rulemaking proceeding under this subchapter. (Added eff. 1/1/02)

Sec. 307.104. Saving Provisions.

The amendment or repeal of a rule does not affect:

(1) the prior operation of the rule or any prior action taken under the rule;

(2) any right, privilege, obligation, or liability previously acquired, accorded, or incurred under the Rule;

(3) any violation of the rule or any penalty or punishment incurred under the Rule before its amendment or repeal; or

(4) any investigation, proceeding, or remedy concerning any privilege, obligation, liability, penalty or punishment under the Rule

(Added eff. 1/1/02)

Sec. 307.105. Severability.

If any part of a Commission rule or a rule's application to any person or circumstance is held invalid, the invalidity does not affect other parts or applications of the Rules that can be given effect without the invalid part or application, and to this end of the Commission's rules are severable.

(Added eff. 1/1/02)

CHAPTER 321. PARI-MUTUEL WAGERING

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CHAPTER 323. DISCIPLINARY ACTION AND ENFORCEMENT

Subchapter A. General Provisions

Sec. 323.1. Investigation and Disciplinary Action.

(a) The Commission may investigate and institute disciplinary action regarding any alleged violations of the Act, a rule or order of the Commission, or an order of a court relating to racing or pari-mutuel wagering.

(b) For purposes of this section, a person who aids or abets or conspires with another to commit a violation is considered to have committed the violation. (Added eff. 3/28/89, (a) amended eff. 1/1/02)

Sec. 323.2. Complaints.

(a) A person may report an alleged violation by filing a written complaint with the Commission on a form prescribed by the Commission.

(b) In receiving complaints under this section, the Commission may not require the complainant to:

- (1) reveal the complainant's name; or
- (2) pay a fee for filing the complaint.

(c) The form must:

(1) contain the name and address, if known, of the person alleged to have committed the violation; and

(2) specify the provision of the Act or rule number alleged to have been violated, if known, and all facts and circumstances relating to the alleged violation;

(d) An association shall include in the official program a statement that describes the procedure for filing a complaint with the Commission. The executive secretary shall approve the form of the statement. The statement must include the name, mailing address, e-mail address, facsimile, and telephone number of the Commission.

(e) An association shall prominently post signs in the racetrack facility that describe the procedure for filing a complaint with the Commission. The executive secretary shall approve the form and location of the signs. (Added eff. 3/28/89; (c) amended eff.

1/2/92; (d), (e) added eff. 4/15/98; amended eff. 1/1/02)

Sec. 323.3. Notice to Violator.

(a) Not later than 30 days after the date a complaint is received under this subchapter, the executive secretary shall notify the alleged violator in writing of the complaint.

(b) Not later than 30 days after the date of receiving notice under this section, a person may file with the Commission a sworn, written response to the complaint. (Added eff. 3/28/89; (b) amended eff. 1/1/02)

Sec. 323.4. Action on Complaints.

(a) On receipt of a complaint under this subchapter, if the executive secretary determines that a violation has occurred, the executive secretary may, in the executive secretary's sole discretion:

(1) issue a preliminary report to the licensee assessing an administrative penalty;

(2) order a hearing be held to suspend or revoke the licensee's license based on the alleged violation; or

(3) take other action that the executive secretary considers necessary.

(b) A hearing held under this section shall be conducted in accordance with Chapter 307 of this title (relating to Practice and Procedure).

(c) At a hearing under this section, the person filing the complaint may be designated a nonparty participant, but may not be designated a party.

(Added eff. 3/28/89; (a) amended eff. 1/2/92; (a) amended eff. 1/1/02)

Sec. 323.5. Complaints against Officials

(a) A complaint against an official other than a steward or racing judge must be made to the stewards or racing judges. The stewards or racing judges shall immediately forward the complaint to the Commission.

(b) A complaint against a steward or racing judge must be made to the executive secretary.

(c) A complaint under this section must be made not later than 72 hours after the action that is

DISCIPLINARY ACTION AND ENFORCEMENT

the subject of the complaint. (Added eff. 1/1/02)

Subchapter B. Civil Remedies

Sec. 323.101. Administrative Penalties.

(a) If the Commission determines that a person regulated under this Act has violated this Act or a rule or order adopted under this Act in a manner that constitutes a ground for a disciplinary action under this Act, the Commission may assess an administrative penalty against that person as provided by this section.

(b) The Commission delegates to the executive secretary the authority to prepare and issue preliminary reports pursuant to the Act §15.03.

(Added eff. 3/28/89; (b)-(f) added eff. 1/2/92; amended eff. 1/1/02)

Subchapter C. Criminal Enforcement

Sec. 323.201. Reporting of Criminal Activity and Convictions.

(a) A licensee, a Commission employee, or an applicant for a license from the Commission shall report any conviction of a felony or misdemeanor, other than a misdemeanor under Vernon's Texas Codes Annotated, Transportation Code, Title 7, Vehicles and Traffic, or a similar misdemeanor traffic offense.

(b) A licensee, a Commission employee, or an applicant for a license from the Commission shall promptly report to the Commission any criminal activity observed relating to racing or pari-mutuel wagering. (Added eff. 3/28/89; amended eff. 1/1/02; (a)

amended eff. 6/1/02)

Sec. 323.202. Notice to District Attorneys.

On a finding by the Commission that a person has engaged in criminal conduct or committed a criminal offense relating to racing or pari-mutuel wagering, the executive secretary may notify the appropriate district attorney or county attorney.

(Added eff. 3/28/89; amended eff. 3/13/02)

Sec. 323.203. Department of Public Safety Reports.

On receipt and review of a report by the Department of Public Safety regarding criminal activity related to racing or pari-mutuel wagering, the Commission shall initiate appropriate disciplinary or legal proceedings. (Added eff. 3/28/89;

amended eff. 3/13/02)

ITEM B.

RULE PROPOSAL:

*Texas Quarter Horse Association's Proposed Change to § 303.93
(f) (3) (D), Quarter Horse Rules (B-1)*



2010 MAR 30 PM 2:16
RECEIVED
TEXAS RACING
COMMISSION

March 29, 2010

Charla Ann King
Executive Director
Texas Racing Commission
P.O. Box 12080
Austin, Texas 78711-2080

Dear Charla Ann,

I am requesting the following rule change be added to the agenda for the April 20, 2010 meeting of the Texas Racing Commission.

303.93 (f)(3)(D)- "TQHA shall maintain records of all ATB racing stock that earn awards. At the completion of a race ~~period not to exceed four racing weeks~~ meeting, TQHA will begin the process to generate awards checks for the owners, breeders and stallion owners corresponding to those ATB racing stock by apportionment according to the percentages expressed in subparagraph (C) of this subsection".

This change will save TQHA money in checks as well as postage. It will also standardize the incentive award for each recipient at each meeting.

The word "owners" was inadvertently left off this rule when we began paying owners awards from TQHA rather than from the racetracks.

I thank you in advance for your consideration.

Sincerely,

Rob Werstler
Executive Director

cc: Mark Fenner

B-1

ITEM C.

INPUT ON TOPICS TO BE ADDRESSED AT THE RCI MODEL RULES & PRACTICES COMMITTEE MEETING

- 1) *Thoroughbred Model Rule – Appropriate Urging of the Thoroughbred Race Horse*
- 2) *Riding Crop – Prohibition against Raising Hand above the Shoulder (C-1)*
- 3) *Hyperbaric Oxygen Chamber (Discussion only) (C-2)*
- 4) *Out of Competition Testing (Discussion only) (C-3)*

- (c) No electrical or mechanical device or other expedient designed to increase or retard the speed of a horse, other than the riding crop approved by the stewards, shall be possessed by anyone, or applied by anyone to the horse at any time on the grounds of the association during the meeting, whether in a race or otherwise.
- (d) Riding crops shall not be used on two-year-old horses before April 1 of each year.
- (e) The riding crop shall only be used for safety, correction and encouragement.
- (f) All riders should comply with the following when using a riding crop:
 - (A) Showing the horse the riding crop and giving it time to respond before hitting it;
 - (B) Having used the riding crop, giving the horse a chance to respond before using it again;
 - (C) Using the riding crop in rhythm with the horse's stride.
 - (D) Not raise their hand(s) above their shoulder when using a riding crop.
- (g) Prohibited use of the riding crop includes but are not limited to striking a horse:
 - (A) on the head, flanks or on any other part of its body other than the shoulders or hind quarters except when necessary to control a horse;
 - (B) during the post parade or after the finish of the race except when necessary to control the horse;
 - (C) excessively or brutally causing welts or breaks in the skin;
 - (D) when the horse is clearly out of the race or has obtained its maximum placing;
 - (E) persistently even though the horse is showing no response under the riding crop; or
 - (F) striking another rider or horse.
- (h) After the race, horses will be subject to inspection by a racing or official veterinarian looking for cuts, welts or bruises in the skin. Any adverse findings shall be reported to the stewards.
- (i) The giving of instructions by any licensee that if obeyed would lead to a violation of this rule may result in disciplinary action also being taken against the licensee who gave such instructions
- (7) Horse Leaving the Racecourse. If a horse leaves the racecourse during a race, it must turn back and resume the race from the point at which it originally left the course.
- (8) Order of Finish
 - (a) The official order of finish shall be decided by the stewards with the aid the photo finish system, and in the absence of the photo finish film record, the video replay. The photo finish and video replay are only aids in the stewards' decision. The decision of the stewards shall be final in all cases.
 - (b) The nose of the horse shall determine the placement of the horse in relationship to other horses in the race.
- (9) Returning After the Finish
 - (a) After a race has been run, the jockey shall ride promptly to the place designated by the stewards, dismount and report to the clerk of scales to be weighed in. Jockeys shall weigh in with all pieces of equipment with which they weighed out.

HYPERBARIC OXYGEN THERAPY

From the Racing Medication and Testing Consortium website: Frequently Asked Questions

http://www.rmtcnet.com/content_faq.asp

Question: Has the RMTC considered whether hyperbaric oxygen therapy impacts performances of horses?

Dr. Waterman: We have discussed the use of hyperbaric oxygen a couple of times but to this point, have taken no action in terms of adding language to the model rules. There are a couple of reasons: 1. Any potential effect from the increased level of oxygen in the blood is exceedingly temporary. As soon as the animal comes out of the "tank," the body is basically trying to revert back to normal. This happens quickly once the animal is breathing normal air, so you would almost have to take the horse straight to the gate from the machine. 2. There is no research on effect on performance in the horse but there is a fair amount in the human. Almost all of the research indicates no benefit in performance parameters from hyperbaric therapy. In fact, a couple of studies hint it may hinder performance.

We are keeping our eyes on this issue, and we could change our stance if new info comes to light. From a pure perception standpoint, I am not sure I would recommend allowing a hyperbaric oxygen chamber on the backstretch. But if someone is using one on a training center, the effect is gone by the time that horse is back on the grounds.

Question: Does the RMTC have a formal policy regarding shockwave therapy? If so, how is it enforced?

Dr. Waterman: The official RMTC policy and the RCI Model Rule prohibits the use of ESWT within 10 days of a race. This was based largely on the early work done by Dr. Scott McClure at Iowa State that showed an analgesic effect from 3-5 days. Given the possible danger to horse and rider, we felt the additional days were warranted. The biggest problem in terms of enforcement is the use of the machine off racetrack grounds where commissions typically do not have jurisdiction. If someone is caught using ESWT off jurisdictional grounds within the prohibited time period before a race, however, they could be charged with a violation depending on how good the evidence is. The fact that the commission doesn't have jurisdiction only means they cannot send investigators, have a horse identifier present or otherwise regulate what happens real-time. It does not mean they cannot pursue a violation that occurs off grounds if they have strong enough evidence to pursue it. At the very least, assuming the horse is entered to run, the horse could be scratched.

ARCI-011-015 Prohibited Practices

The following are considered prohibited practices:

- (1) The possession or use of a drug, substance or medication on the premises of a facility under the jurisdiction of the Commission for which a recognized analytical method has not been developed to detect and confirm the administration of such substance; or the use of which may endanger the health and welfare of the horse or endanger the safety of the rider; or the use of which may adversely affect the integrity of racing; or,
- (2) The possession or use of a drug, substance, or medication on the premises of a facility under the jurisdiction of the Commission that has not been approved by the United States Food and Drug Administration (FDA) for any use in (human or animal) is forbidden without prior permission of the Commission or its designee.
- (3) The possession and/or use of blood doping agents, including but not limited to those listed below, on the premises of a facility under the jurisdiction of the Commission is forbidden:
 - (a) Erythropoietin;
 - (b) Darbepoetin;
 - (c) Oxyglobin®; and
 - (d) Hemopure®.

ARCI-011-022 Out of Competition Testing for Blood and/or Gene Doping Agents

- (1) Any horse on the grounds at a racetrack or training center under the jurisdiction of the commission; or under the care or control of trainer or owner licensed by the commission is subject to testing for blood and/or gene doping agents without advance notice. This rule does not apply to therapeutic medications approved by the FDA for use in the horse.
- (2) Horses to be tested may be selected at random, with probable cause, or as determined by the commission;
- (3) The Commission Veterinarian, or any licensed veterinarian or licensed veterinary technician authorized by the commission, may at any time, take a urine, blood or hair sample from a horse for this purpose.
- (4) Prohibited substances, practices and procedures are defined as:
 - (a) Blood doping agents including, but not limited to Erythropoietin (EPO), Darbepoetin, Oxyglobin, Hempure, Aransep or any substance that abnormally enhances the oxygenation of body tissues.
 - (b) Gene doping agents or the non-therapeutic use of genes, genetic elements, and/or cells that have the capacity to enhance athletic performance or produce analgesia.

ITEM D.

**OVERVIEW OF
RCI PROPOSED MODEL LEGISLATION
TO CREATE AN INTERSTATE REGULATORY COMPACT
FOR PARI-MUTUEL RACING (D-1)**

Model Legislation for a National Racing Regulatory Entity.

New Interstate Compact to Facilitate State Regulation of Racing and Wagering.

A Project of Racing Commissioners International
in conjunction with the
Council of State Governments
and an
Advisory Steering Committee
comprised of representatives from
The National Thoroughbred Racing Association,
The Jockey Club,
The National Horseman's Protection and Benevolent Association,
United States Trotting Association, and
Keeneland.

Compact Project Leader:

Rick Goodell, Esq
Assistant Counsel,
New York State Racing and Wagering Board

February 5, 2010

Racing Commissioners International
1510 Newtown Pike, Lexington, Kentucky 40510
859-224-7070

D-1

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Interstate Racing and Wagering Compact

Article I

Purpose

The purposes of this compact are:

- A. To enable member states to act jointly and cooperatively to create more uniform, effective, and efficient practices, programs, rules, and regulations relating to live pari-mutuel horse or greyhound racing and to pari-mutuel wagering activities, both on-track and off-track, that occur in or affect a member state.
- B. To facilitate the health and growth of the industry by simplifying the process of participating in live horse and greyhound racing and pari-mutuel wagering, improving the quality and integrity of racing and wagering, more effectively regulating simulcast and wagering systems and activities, and through cooperative action reducing the costs incurred by each member state or participant.
- C. To authorize the state racing commission to participate in this compact.
- D. To permit representatives of the member states to participate in this compact and, through the compact commission established by this compact, to enter into contracts with governmental agencies and other persons to carry out the purposes of this compact.
- E. To establish the compact commission created by this compact as an interstate governmental entity duly authorized to request and to receive criminal history record information from the Federal Bureau of Investigation and from state, local, and foreign law enforcement agencies.

Article II**Definitions**

As used in this compact, unless the context clearly requires a different construction:

- A. "Commissioner" means the chairperson of the member state racing commission, or such person's designee, who represents the member state as a voting member of the compact commission, and anyone who is serving as such person's alternate;
- B. "Compact commission" means the organization of officials from the member states that is authorized and empowered by this compact to carry out the purposes of this compact;
- C. "Compact rule" means a rule or regulation adopted by a member state through the compact to govern, for two or more member states, any part of live pari-mutuel horse and greyhound racing or pari-mutuel wagering activities, whether on-track or off-track, that occur in or affect such states;
- D. "Live racing" means live horse or greyhound racing with pari-mutuel wagering;
- E. "Member state" means each state that has enacted this compact;
- F. "National industry stakeholder" means a non-governmental organization that the compact commission determines from a national perspective significantly represents one or more categories of participants in live racing and pari-mutuel wagering;
- G. "Participants in live racing and pari-mutuel wagering" means all individuals and others who participate, operate, or are involved in live racing and related pari-mutuel wagering;
- H. "State" means each of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and each territory or possession of the United States; and

- 1
- 2 I. "State racing commission" means the state racing commission, or its equivalent, in each
- 3 member state. Where a member state has more than one, it shall mean all such racing
- 4 commissions, or their equivalents.
- 5
- 6

7 **Article III**

8 **Composition and Meetings of Compact Commission**

9

10 The member states shall create and participate in a compact commission as follows:

11

- 12 A. This compact shall come into force when enacted by any six (6) eligible states, and shall
- 13 thereafter become effective as to any other eligible state that enacts this compact. Any state
- 14 that has adopted or authorized pari-mutuel wagering on live horse or greyhound racing shall
- 15 be eligible to become a party to this compact. A compact rule, fee, practice, or program shall
- 16 not become effective in a new member state based merely upon it entering the compact.
- 17
- 18 B. The member states hereby create the Racing and Wagering Commission, a body corporate
- 19 and interstate governmental entity of the member states, to coordinate the decision making
- 20 and actions of each member state racing commission through a compact commission.
- 21
- 22 C. The compact commission shall consist of one (1) commissioner, the chairperson of the state
- 23 racing commission or such person's designee, from each member state. When a
- 24 commissioner is not present to perform any duty in the compact commission, a designated
- 25 alternate may serve instead. The person who represents a member state in the compact
- 26 commission shall serve and perform such duties without compensation or remuneration;
- 27 provided that, subject to the availability of budgeted funds, each may be reimbursed for
- 28 ordinary and necessary costs and expenses. The designation of a commissioner, including
- 29 the alternate, shall be effective when written notice has been provided to the compact
- 30 commission. The commissioner, including the alternate, must be a member or employee of

1 the state racing commission.

2
3 D. The compact commissioner from each state shall participate as an agent of the state racing
4 commission. Each commissioner shall have the assistance of the state racing commission in
5 regard to all decision making and actions of the state in and through the compact
6 commission.

7
8 E. Each member state, by its commissioner, shall be entitled to one (1) vote in the compact
9 commission. A majority vote of the total number of commissioners shall be required to issue
10 or renew a license, to receive and distribute any funds, and to adopt, amend, or rescind the
11 by-laws. A compact rule, fee, practice, or program shall take effect in and for each member
12 state whose commissioner votes affirmatively to adopt it. Other compact actions shall
13 require a majority vote of the commissioners who are meeting.

14
15 F. Meetings and votes of the compact commission may be conducted in person or by telephone
16 or other electronic communication. Meetings may be called by the chairperson of the
17 compact commission or by any two (2) commissioners. Reasonable notice of each meeting
18 shall be provided to all commissioners serving in the compact commission.

19
20 G. No action may be taken at a compact commission meeting unless there is a quorum, which is
21 either a majority of the commissioners in the compact commission or, where applicable, all
22 the commissioners from any member states who propose or are voting affirmatively to adopt
23 a compact rule, fee, practice, or program.

24
25 H. Once effective, the compact shall continue in force and remain binding according to its terms
26 upon each member state; provided that, a member state may withdraw from the compact by
27 repealing the statute that enacted the compact into law. The racing commission of a
28 withdrawing state shall give written notice of such withdrawal to the compact chairperson,
29 who shall notify the member state racing commissions. A withdrawing state shall remain
30 responsible for any unfulfilled obligations and liabilities. The effective date of withdrawal

1 from the compact shall be the effective date of the repeal.

4 **Article IV**

5 **Operation of Compact Commission**

6
7 The compact commission is hereby granted, so that it may be an effective means to pursue and
8 achieve the purposes of each member state in this compact, the power and duty:

- 9
- 10 A. To adopt, amend, and rescind by-laws to govern its conduct, as may be necessary or
11 appropriate to carry out the purposes of the compact; to publish them in a convenient form;
12 and to file a copy of them with the state racing commission of each member state.
- 13
- 14 B. To elect annually from among the commissioners (including alternates) a chairperson, vice-
15 chairperson, and treasurer with such authority and duties as may be specified in the by-laws.
- 16
- 17 C. To establish and appoint committees which it deems necessary for the carrying out of its
18 functions, including advisory committees which shall be comprised of national industry
19 stakeholders and organizations, and such other persons as may be designated in accordance
20 with the by-laws, to obtain their timely and meaningful input into the compact rule, fee,
21 practice, and program making processes.
- 22
- 23 D. To establish an executive committee, with membership established in the by-laws, which
24 shall oversee the day-to-day activities of compact administration and management by the
25 executive director and staff; hire and fire as may be necessary after consultation with the
26 compact commission; administer and enforce compliance with the provisions, by-laws, rules,
27 fees, practices, and programs of the compact; and perform such other duties as the by-laws
28 may establish.
- 29
- 30 E. To create, appoint, and abolish all those offices, employments, and positions, including an

1 executive director, useful to fulfill its purposes; to hire persons for them; to prescribe their
2 powers, duties, and qualifications; and to provide for their term, tenure, removal,
3 compensation, fringe and retirement benefits, and other conditions of employment.
4

5 F. To delegate day-to-day management and administration of its duties, as needed, to an
6 executive director and support staff, such as the Association of Racing Commissioners
7 International, Inc. or its successor.
8

9 G. To adopt an annual budget sufficient to provide for the payment of the reasonable expenses
10 of its establishment, organization, and ongoing activities. The budget shall be fully funded
11 by means established by the compact commission. A member state may choose to participate
12 in funding by means other than a compact fee or fees, in which case the compact commission
13 shall make a finding of how much the member state, including its racing and wagering, may
14 benefit from budget items (less program costs funded by user fees); and the member state
15 may provide such funding by its own means. Indivisible benefits to live racing shall be
16 allocated by proportion of annual purses. Nothing in this provision shall prevent the compact
17 commission from paying obligations accrued in a prior year or from revising its finding of
18 the benefit to a member state from the preceding year.
19

20 H. To provide a mediation and a binding dispute resolution service for member states who
21 decide to use them to resolve a compact dispute among each other; provided, that the design
22 and implementation of each program shall be established by compact rule making.
23

24 **Article V**

25 **General Powers and Duties**

26
27 To allow each member state, as and when it chooses, to achieve the purposes of this compact through
28 joint and cooperative action, the member states are hereby granted the power and duty, by and
29 through the compact commission:
30

- 1 A. To act jointly and cooperatively to create a more equitable and uniform pari-mutuel racing
2 and wagering interstate regulatory framework, including but not limited to the adoption of
3 standardized rules of racing and equine drug regulations, closing inequalities in how
4 regulatory standards and statutory requirements apply to industry participants, improving
5 wagering monitoring and integrity, and making industry and participant information more
6 available to government officials.
- 7
- 8 B. To collaborate with national industry stakeholders and industry organizations, such as the
9 Racing Medication and Testing Consortium, in the design and implementation of compact
10 rules, fees, practices, and programs in a manner that serves the best interests of racing.
- 11
- 12 C. To create more uniform, effective, or efficient practices and programs, with the consent of
13 each member state that shall participate in them, relating to any part of live pari-mutuel horse
14 or greyhound racing or pari-mutuel wagering activities, whether on-track or off-track, that
15 occur in or affect a member state.
- 16
- 17 D. To adopt compact rules, which shall have the force and effect of state rules or regulations in
18 the member states who vote to adopt them, to govern all or any part of live pari-mutuel horse
19 and greyhound racing or pari-mutuel wagering activities.
- 20
- 21 E. To charge and collect a fee for services provided by the compact, including licensure and
22 renewal of each license applicant, and for defraying the actual cost of compact commission
23 administration, procedures, activities, and programs.
- 24
- 25 F. To issue and renew licenses for participants in live racing and pari-mutuel wagering who are
26 found by the compact commission to have met its licensure or renewal requirements in
27 categories it chooses to license. It shall establish the term for each category, and the license
28 criteria and weight given to character and integrity information that in its judgment meet the
29 most restrictive requirements of the member states. The compact commission shall not have
30 the power or authority to deny a license. If it determines that an applicant will not be

1 eligible, it shall notify the applicant that it will not be able to process the application any
2 further, which shall not constitute and shall not be considered to be the denial of a license.
3 Although an applicant shall have the right to present further evidence and to be heard, the
4 final decision on issuance or renewal of a license shall be made by the compact commission
5 pursuant to its established requirements. The compact commission shall have the power and
6 duty to investigate license applicants and, as permitted by federal and state law, to gather
7 information, including criminal history records from the Federal Bureau of Investigation and
8 from state, local, and foreign country law enforcement agencies (including the Royal
9 Canadian Mounted Police), necessary to decide whether an applicant meets its license
10 requirements. Such criminal history record information may be received and reviewed only
11 by the officials on, and employees of, the compact commission, and that information may be
12 used only for the purposes of this compact. No such official or employee may disclose or
13 disseminate such criminal history record information to any person or entity other than
14 another official on, or employee of, the compact commission. The compact commission, its
15 employees, or its designee shall take the fingerprints of each license applicant and, pursuant
16 to Public Law 92-544 or Public Law 100-413, forward the fingerprints to a state
17 identification bureau, the Association of Racing Commissioners International, Inc. (an
18 association of state officials regulating pari-mutuel wagering, designated by the Attorney
19 General of the United States), or another entity with an equivalent designation, for
20 submission to the Federal Bureau of Investigation or other receiving law enforcement
21 agency. The compact commission shall cooperate with the Interstate Compact on Licensure
22 of Participants in Live Racing with Pari-Mutuel Wagering and, if requested by that entity,
23 assume all of its licensing and employer duties and responsibilities with the authority of and
24 pursuant to all of the licensing standards, laws, rules and regulations applicable to that entity.

25 26 **Article VI**

27 **Other Powers and Duties**

28
29 The compact commission may exercise such incidental powers and duties as may be necessary and
30 proper for it to function in a useful manner, including but not limited to the power and duty:

- 1
- 2 A. To enter into contracts and agreements with governmental agencies and other persons,
- 3 including officers and employees of a member state, to provide personal services for its
- 4 activities and such other services as may be necessary.
- 5
- 6 B. To borrow, accept, and contract for the services of personnel from any state, federal, or other
- 7 governmental agency, or from any other person or entity.
- 8
- 9 C. To receive information from and to provide information to each member state racing
- 10 commission, including its officers and staff, on such terms and conditions as may be
- 11 established in the by-laws.
- 12
- 13 D. To acquire, hold, and dispose of any real or personal property by gift, grant, purchase, lease,
- 14 license, and similar means, and to receive additional funds through gifts, grants, and
- 15 appropriations.
- 16
- 17 E. To purchase and maintain insurance and bonds, and to require others to do so.
- 18
- 19 F. When authorized by a compact rule, to conduct hearings, issue subpoenas requiring the
- 20 attendance and testimony of witnesses and the production of evidence, and render decisions
- 21 and orders.
- 22
- 23 G. To establish in the by-laws the requirements that shall describe and govern its duties to
- 24 conduct open or public meetings and to provide public access to compact records and
- 25 information, which shall include the exceptions established by law in one or more member
- 26 states and shield any confidential submissions made in connection with license applications.
- 27
- 28 H. To enforce compliance with the provisions, by-laws, rules, fees, practices, and programs of
- 29 the compact using such means as may be consistent with this compact.
- 30

Article VII

Compact Rule-Making

In the exercise of its rule making authority, the compact commission shall:

- A. Engage in formal rule making pursuant to a process that substantially conforms to the Model State Administrative Procedure Act of 1981 as amended, as may be appropriate to the actions and operations of the compact commission.
- B. Gather information and engage in discussions with advisory committees, national industry stakeholders, and others to foster and conduct a collaborative approach in the design and advancement of compact rules in a manner that serves the best interests of racing and as established in the by-laws.
- C. Not publish a proposed compact rule in a member state over its objection. The affirmative vote of a member state for a proposed compact rule shall be necessary and sufficient to adopt, amend, or rescind a compact rule as applicable to that member state.
- D. Have a standing committee that reviews at least quarterly the participation in and value of compact rules and, when it determines that a revision is appropriate or when requested to by any member state, submits a revising proposed compact rule. To the extent a revision would only add or remove a member state or states from where a compact rule has been adopted, the vote required by this Article shall be required of only such state or states.

Article VIII

Compact Fees

- A. The compact commission may charge and collect a fee for services provided by the compact,

1 including licensure and renewal of each license applicant, and for defraying the actual cost of
2 compact commission administration, procedures, activities, and programs; provided that such
3 latter fee or fees shall not create a disproportionate cost for any member state.

4
5 B. Compact fees must relate to participation in live horse or greyhound racing and pari-mutuel
6 wagering activities, whether on-track and off-track, that occur in or affect a member state.
7 No fee shall be adopted except after consultation with relevant advisory committees and
8 interested national industry stakeholders.

9
10 C. The establishment of a compact fee may include a requirement that a participant in live horse
11 or greyhound racing with pari-mutuel wagering, as a condition of continued participation,
12 collect, hold, and remit to the compact commission funds that belong to a third party, with
13 which it conducts related transactions, that is obliged to pay the compact fee.

14
15 D. The compact commission may require fee payments to occur on a periodic basis,
16 accompanied by a sworn report attesting to accuracy and completeness, and may provide that
17 it shall have the power to examine the books and records of any persons required to pay or
18 remit it, for the purpose of ascertaining whether the proper amounts are being paid. Such
19 books and records shall not thereby be made available for public inspection.

20
21 E. No fee shall be adopted before the completion of a period of public notice and participation
22 substantially conforming, as may be appropriate to the actions and operations of the compact
23 commission, to that for making rules under the Model State Administrative Procedure Act of
24 1981 as amended.

25 26 **Article IX**

27 **Status and Relationship to Member States**

28
29 A. The compact commission, as an interstate governmental entity, shall be exempt from all
30 taxation in and by the member states.

- 1
- 2 B. The compact commission shall not pledge the credit of any member state except by and with
- 3 the appropriate legal authority of that state.
- 4
- 5 C. The compact commission shall adopt an annual budget that is sufficient to provide for the
- 6 payment of the reasonable expenses of its establishment, organization, and ongoing
- 7 activities, and by which member states shall fully fund the compact commission by the
- 8 means set forth in this compact.
- 9
- 10 D. Each member state shall reimburse or otherwise pay the expenses of its commissioner,
- 11 including any alternate, in the compact commission.
- 12
- 13 E. No member state, except as provided in Article XII, shall be held liable for the debts or other
- 14 financial obligations incurred by the compact commission.
- 15
- 16 F. No member state shall have, while it participates in the compact commission, any claim to or
- 17 ownership of any property held by or vested in the compact commission or to any compact
- 18 commission funds held pursuant to this compact except for state license or other fees or
- 19 monies collected by the compact commission as its agent.
- 20
- 21 G. The compact dissolves upon the date of the withdrawal of the member state that reduces
- 22 membership in the compact to one (1) state. Upon dissolution, the compact becomes null
- 23 and void and shall be of no further force or effect, although rules and programs adopted
- 24 through this compact shall remain rules and programs in each member state that had adopted
- 25 or consented to them, and the business and affairs of the Racing and Wagering Compact shall
- 26 be concluded and any surplus funds shall be distributed to the former member states in
- 27 accordance with the by-laws.
- 28
- 29
- 30

Article X

Rights and Responsibilities of Member States

- A. Each member state in the compact shall accept the decisions, duly applicable to it, of the compact commission in regard to compact rules, fees, practices, and programs and the issuance or renewal of licenses.
- B. When the compact commission determines that an application shall not be processed further, the member states shall not treat this as the denial of a license or otherwise penalize the applicant because of such action by the compact commission.
- C. Each member state in the compact shall have and exercise the right:
- (1) to charge a fee for the use of a compact license within that member state equal to the fee charged for a comparable state license;
 - (2) to apply its own standards and procedures to determine whether use of a compact commission license should be suspended or revoked in its jurisdiction;
 - (3) to apply its own standards for licensure or renewal of state applicants who do not meet the licensure requirements of the compact commission, who are within a category of participants in racing and wagering that the compact commission does not license, or who apply to the member state for a state license; and
 - (4) to apply its own standards and procedures, except as may be provided by rule, to determine whether a participant in live racing or pari-mutuel wagering has violated any rule or regulation in its jurisdiction and to impose an appropriate penalty.
- D. Each member state racing commission shall promptly notify the compact commission, or its designee, whenever the member state has adjudged a violation of any state or compact rule

1 and imposed a suspension or revocation upon a compact commission licensee.

2
3 E. All departments, agencies, bodies, officers, and employees of each member state and its
4 political subdivisions are authorized to cooperate with the compact commission and shall
5 take all necessary and appropriate action, such as to publish proposed and adopted rules in
6 state registries and administrative codes, to effectuate and in furtherance of compact duties or
7 actions that may affect the state.

8
9 F. This statute shall not be construed to diminish or limit the powers and responsibilities of the
10 member state racing commission, or to invalidate any action it has previously taken, except
11 to the extent it has, by its compact commissioner, expressed its consent to a specific rule or
12 other action of the compact commission.

13
14
15 **Article XI**

16 **Enforcement of Compact**

17
18 A. Any member state in the compact and the compact commission may initiate legal action in
19 the United States District Court, in any federal district where the compact commission has an
20 office, to enforce compliance by any member state or the compact commission with the
21 compact provisions, by-laws, fees, findings, practices, and programs.

22
23 B. Any member state in the compact and the compact commission may initiate legal action, in
24 any state or federal court, to enforce the compact provisions, fees, practices, and programs
25 against any person, including a non-member state or political subdivision.

26
27 C. The compact commission shall have standing to intervene in any legal action that pertains to
28 the subject matter of the compact and might affect its powers, duties, or actions.

29
30 D. The courts and executive in each member state shall enforce the compact and take all actions

1 necessary and appropriate to effectuate its purposes and intent. Compact provisions, by-laws,
2 and rules shall be received by all judges, departments, agencies, bodies, and officers of each
3 member state and its political subdivisions as evidence of them.
4

5 E. The compact commission may require, from the date a compact fee was required to be paid,
6 interest not to exceed the rate of one (1) percent per month and a penalty not to exceed five
7 (5) percent. The compact commission may, if it determines that any fees received by it were
8 paid in error, and provided that an application for it is filed with the compact commission
9 within one (1) year from the time the erroneous payment is made, correct the error by a
10 refund, without interest, including from other collected fees.
11

12 F. The compact commission, if it determines that a payment or report is in error, may make a
13 finding that fixes the correct amount of the fee. It must issue the finding within three (3)
14 years from when a fee or report was due or filed. The finding shall be final and conclusive
15 unless an application for a hearing is filed by the subject within thirty (30) days. The action
16 of the compact commission in making a final finding, after a hearing, shall be reviewable in
17 state court as provided in this compact.
18
19

20 Article XII

21 Legal Actions Against Compact

22
23 A. Any person may commence a claim, action, or proceeding in state court to challenge a
24 compact rule, fee, practice, or program that is duly applicable to that state, in the same
25 manner and subject to the same liabilities, defenses, rights to indemnity and defense by the
26 state, and other legal rights and duties, for non-compact matters, of the state racing
27 commission under the laws of its state.
28

29 B. A compact commissioner, alternate, or other member or employee of a state racing
30 commission who undertakes compact activities or duties does so in the course of business of

1 their state racing commission, and shall have the liabilities, defenses, rights to indemnity and
2 defense by the state, and other legal rights and duties, for non-compact matters, of state
3 employees under the laws of their state. The executive director and other employees of the
4 compact commission shall be accorded the same legal rights and duties, except to indemnity,
5 of state employees under the laws of the member state in which they are primarily employed.
6

- 7 C. Each member state shall be liable for and pay judgments filed against the compact
8 commission to the extent related to its participation in the compact. Where liability arises
9 from action undertaken jointly with other member states, the liability shall be divided equally
10 among the states for whom the applicable rule, fee, practice, program, or action or omission
11 of the executive director or other employees of the compact commission was undertaken; and
12 no member state shall contribute to or pay, or be jointly or severally or otherwise liable for,
13 any part of any judgment beyond its share as determined in accordance with this Article.
14
15

16 **Article XIII**

17 **Construction, saving, and severability**

- 18
19 A. This compact shall be liberally construed so as to effectuate its purposes. The provisions of
20 this compact shall be severable and if any phrase, clause, sentence or provision of this
21 compact is declared to be contrary to the Constitution of the United States or of any member
22 state, or the applicability of this compact to any government, agency, individual, person or
23 circumstance is held invalid, the validity of the remainder of this compact and its
24 applicability to any government, agency, person or circumstance shall not be affected. If all
25 or some portion of this compact is held to be contrary to the constitution of any member
26 state, the compact shall remain in full force and effect as to the remaining member states and
27 in full force and effect as to the state affected as to all severable matters.
28
29 B. In the event of any allegation, finding, or ruling against the compact or its procedures or
30 actions, provided that a member state has followed the compact's stated procedures, any rule
31 it purported to adopt using the procedures of this statute shall constitute a duly adopted and

1 valid state rule, and any program that it purported to create or agree to using the procedures
2 of this statute shall constitute a duly made and valid state program and multilateral agreement
3 with the other consenting member states.
4
5

6 Article XIV

7 Restrictions and Grants of Authority

- 8
- 9 A. The compact commission shall not adopt any practice, program, or rule that changes New
10 York state requirements governing the amount and distribution of the takeout, retention, or
11 breakages on intrastate wagers or that imposes licensure requirements for non-racing and
12 non-wagering employees of a racetrack or off-site wagering facility operating wholly in state.
13
- 14 B. New York state laws applicable to pari-mutuel racing and wagering shall remain in full force
15 and effect.
16

17 **NOTE:** ARTICLE XIV is the section of the bill where individual states may
18 customize this authorizing legislation. The Model bill contains language
pertinent to New York.